



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

October 13, 1994
AO-94-35

Mary R. Jeka, General Counsel
Massachusetts Water Resources Authority
100 First Avenue
Boston, MA 02129

Re: Participation in Campaign by Public Employees

Dear Ms. Jeka:

This letter is in response to your October 4, 1994 request for an advisory opinion regarding the legality of your providing assistance to a candidate for U.S. Senate.

You have stated that you are currently employed with the Massachusetts Water Resources Authority, an independent government agency in Massachusetts. You state that you are interested in using your vacation time over the next few weeks to work on a campaign to reelect a U.S. Senator.¹ You state that all of your duties at MWRA will be covered during your vacation and, we may assume, that no public resources or time will therefore be used toward this campaign. You have also stated that the extent of your work on this campaign will be limited to organizing constituency groups across the state and will involve no fundraising activities.

You have asked whether the described activities comply with the provisions of M.G.L. c. 55, the campaign finance law.

M.G.L. c. 55, s. 13 provides, in pertinent part, that:

No person employed for compensation, other than an elected official, by the commonwealth . . . shall directly or indirectly solicit or receive any gift, payment,

¹ Although federal law generally preempts state law in connection with federal candidates and campaigns, the provisions of M.G.L. c. 55, ss. 13-17 referenced in this opinion are an exception to this general rule since they restrict the political activity of state public employees and political activity within state public buildings. See FEC Advisory Opinion AO 1989-27.

contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purposes whatever . . .

In this office's opinion persons employed "by the commonwealth" include employees of state authorities such as the MWRA. See s. 179 of c. 653 of Acts of 1989. Since you are "employed for compensation" by the commonwealth you are subject to the restrictions against political solicitation and receipt set forth in section 13. As long as you will not directly or indirectly solicit or receive monies or other things of value for political purposes, your activities would not be prohibited by section 13. See AO-93-34.

You should be certain, however, that your activities do not inadvertently result in an indirect political solicitation. See AO-93-28 (public employee is not prohibited by s. 13 from being a guest speaker at political event provided employee does no fundraising), AO-93-10 (public employee may not participate in fundraising meeting and may not identify individuals whose knowledge and affiliation would permit fundraisers to develop lists of people to solicit), AO-93-04 (senior administration officials not prohibited from participating in evening meetings that deal with grass roots organizing provided no fund raising occurs), AO-90-07 (consultant's development of fundraising strategies constitutes an indirect solicitation prohibited by section 13), AO-89-24 (helping to create data base by supplying contributor information is indirect solicitation prohibited by section 13), Compare AO-88-25 (purely clerical tasks such as data entry of campaign contributors do not constitute indirect solicitation).

In addition, you should be aware of the provisions of M.G.L. c. 55, ss. 14-17 as well as other restrictions relevant to public employees participating in campaign activities. For your information on these matters, I have enclosed copies of the office's "A Guide to Political Activity for State, County and Municipal Employees" as well as an interpretative bulletin, OCPF-IB-92-01, issued by this office. In particular, you should note that the prohibitions in section 13 as well as sections 14-17 apply even if you provide services only before or after work, on weekends, or during a vacation.

Please also be aware of the principles enunciated by the Supreme Judicial Court in Anderson v. City of Boston, 376 Mass. 178 (1978) which prohibit the use of public resources for any political purpose in connection with a ballot question or a candidate's nomination or election. Examples of such resources would include, but not be limited to staff time as well as office resources and supplies such as telephone, fax and copying machines.

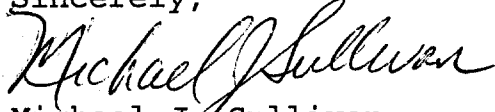
Subject to the restrictions regarding political fundraising noted above, however, it is the conclusion of this office that you may participate fully in the activities you have described and be in compliance with the campaign finance law.

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This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions regarding the campaign finance laws.

Sincerely,



Michael J. Sullivan
Director

MJS/cp
Enclosures